

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 14, 2011

**SENATE BILL**

**No. 252**

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**Introduced by Senator Vargas**

February 10, 2011

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An act to add Article 4.5 (commencing with Section 19135) to Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 252, as amended, Vargas. Public contracts: personal services.

The California Constitution provides that the civil service includes every officer and employee of the state, except as otherwise provided. The California courts have interpreted the California Constitution as generally restricting the contracting out of state activities or tasks to the private sector, if those activities or tasks may be adequately and competently performed by state employees. Existing statutory law codifies certain judicially created exceptions to that constitutional provision, and authorizes the state to enter into personal services contracts when specified conditions are met.

The California Public Records Act requires each state and local agency to make its records available for public inspection during office hours and, upon request of any person, to make copies available upon payment of fees, unless the records are exempt by law from disclosure.

This bill would enact the Government Oversight and Fiscal Accountability Review Act of 2011. The bill would require a state agency that enters into a privatization contract, as defined, to report to the Department of General Services regarding that privatization contract, and would require the department to compile, publish, and make that

report available for public inspection. The bill would also provide that a subcontract executed under a privatization contract is a public record, and would require the contractor to submit these subcontracts to the contracting agency, which would in turn be required to make the records available to the public pursuant to the California Public Records Act. State agencies would also be required to prepare, as part of their budget requests, a document that contains specified information relating to their use of ~~private~~ *privatization* contractors. The bill would also make privatization contracts subject to audit or review by the Bureau of State Audits, at the discretion of the State Auditor.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 4.5 (commencing with Section 19135) is  
2 added to Chapter 5 of Part 2 of Division 5 of Title 2 of the  
3 Government Code, to read:

4  
5 Article 4.5. Government Oversight and Fiscal Accountability  
6 Review  
7

8 19135. This article shall be known, and may be cited, as the  
9 Government Oversight and Fiscal Accountability Review Act of  
10 2011.

11 19136. For purposes of this article:

12 (a) "Agency" includes any executive office, department,  
13 division, board, commission, or other office or officer in the  
14 executive branch of the government.

15 (b) "Person" includes an individual, institution, federal, state,  
16 or local government entity, or any other public or private entity.

17 (c) "Privatization contract" means an agreement or combination  
18 or series of agreements, ~~including, but not limited to, a personal~~  
19 ~~services contract executed pursuant to Section 19130~~, by which a  
20 privatization contractor agrees with an agency to provide services  
21 valued at one hundred thousand dollars (\$100,000) or more, that  
22 are substantially similar to, and in lieu of, services provided, in  
23 whole or in part, by civil service employees of the agency.

24 (d) "Privatization contractor" means any contractor, consultant,  
25 subcontractor, independent contractor, or private business owner

1 that contracts with an agency to perform services that are  
2 substantially similar to, and in lieu of, services provided, in whole  
3 or in part, by civil service employees of the agency.

4 (e) “Privatization contractor employee” includes a worker  
5 directly employed by a privatization contractor, as well as an  
6 employee of a subcontractor or an independent contractor that  
7 provides supplies or services to a privatization contractor.

8 (f) “Services” includes, with respect to a privatization contractor,  
9 all aspects of the provision of services provided by a privatization  
10 contractor pursuant to a privatization contract, or any services  
11 provided by a subcontractor of a privatization contractor under the  
12 privatization contract.

13 19137. (a) A privatization contractor shall file with the  
14 contracting agency a copy of each subcontract or amendment to a  
15 subcontract executed under a privatization contract. The agency  
16 shall maintain the subcontract or amendment to the subcontract as  
17 a public record, as defined in the California Public Records Act  
18 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
19 Title 1).

20 (b) A privatization contract shall include language that provides  
21 for public access to the completed contract.

22 (c) As part of the budgetary process, an agency shall provide  
23 an addendum to its submitted budget request that includes all of  
24 the following information:

25 (1) The name of each privatization contractor or subcontractor  
26 that has entered into a privatization contract with the agency during  
27 that year, the duration of that privatization contract, and the services  
28 provided pursuant to that contract.

29 (2) The total cost of each privatization contract for the prior  
30 year.

31 (3) The projected number of privatization contracts for the  
32 current and upcoming year and the estimated cost of each contract  
33 for the current and upcoming year.

34 (4) For each privatization contract, the number of privatization  
35 contractor employees and consultants, reflected as full-time  
36 equivalent positions, and their hourly wage rates for the current  
37 and previous fiscal year.

38 (d) The addendum provided pursuant to subdivision (c) shall  
39 be a public record.

(e) A privatization contract shall be subject to audit or review, as defined by the American Institute of Certified Public Accountants, by the Bureau of State Audits at the discretion of the State Auditor. An audit or review shall be conducted in compliance with generally accepted auditing standards.

19138. (a) An agency that enters into a privatization contract shall prepare and submit to the Department of General Services on a quarterly basis a report containing both of the following:

(1) The name of ~~any person who~~ *the privatization contractor and the number of privatization contractor employees and consultants, reflected as full-time equivalent positions, that performed legal, medical, accounting, engineering, or any other professional, technical, or consultant service for the agency on a contractual basis during the previous quarter.*

(2) The amount of compensation received by each ~~person~~ *privatization contractor employee or consultant* for the services described in paragraph (1) during the previous quarter.

(b) An agency that enters into a privatization contract shall prepare and submit to the Department of General Services on an annual basis a report containing both of the following:

(1) A copy of each privatization contract for that year.

(2) A budget analysis of each privatization contract reported pursuant to paragraph (1) that contains all of the following:

(A) The cost of each privatization contract for the prior, current, and next year.

(B) The number of privatization contractor employees, reflected as full-time equivalent positions, and their hourly wage rates.

(C) The cost of benefits paid by the agency for each privatization employee for the current and previous year.

(c) The Department of General Services shall compile, publish, and make available for public inspection all contracting reports he or she has received in accordance with this article.